

**CALIFORNIA GAMBLING CONTROL COMMISSION**

**INITIAL STATEMENT OF REASONS**

CGCC-GCA-2008-R-4

**HEARING DATE:**

None Scheduled

**SUBJECT MATTER OF  
PROPOSED REGULATIONS:**

Designation of Commission Employees Subject to the Provisions of Business and Professions Code Section 19981, Subdivision (a), Upon Separation From Commission Employment; Prohibited Activities.

**SECTIONS AFFECTED:**

California Code of Regulations, Title 4, Division 18, Chapter 11, Adopt Section 12591.

**SPECIFIC PURPOSE OF REGULATORY PROPOSAL:**

The California Gambling Control Commission (Commission) is proposing to adopt a regulation that would implement a designation of affected Commission employees in accordance with subdivision (a) of section 19981 of the Business and Professions Code.<sup>1</sup> The proposed regulation would establish a new section in Chapter 11 of Division 18 that will designate those Commission employees who are precluded from providing representation of another, for compensation, before the Commission following separation from their employment with the Commission for a period of three years.

This statutory prohibition was originally established by the Milton Marks Public Employees Restoration Act of 1990, part of the Political Reform Act of 1974, which prohibited former employees from representing another, for compensation, for a period of one year. That prohibition was expanded to prohibit this representation for a period of three years from separation of employment in Chapter 867, Statutes of 1997 (Senate Bill 8, Lockyer)<sup>2</sup>.

The proposed regulation is intended to assist in preserving the Commission's credibility, independence, and ability to make unbiased and objective decisions. In addition, this prohibition should eliminate, or at least lessen, even the appearance of any unfair advantage and/or undue influence affecting the outcome of proceedings before the Commission.

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<sup>1</sup> All statutory references are to the Business and Professions Code, unless otherwise specified.

<sup>2</sup> Ch. 867, Stats. 1997, established the initial 3-year prohibition with the amendment of then § 19959.5. Ch. 738, Stats. 2002 (AB-2431, Com. on Gov. Org.) renumbered that section to the current § 19981.

**PROPOSED ACTION:**

The proposed action would establish a new section in Chapter 11 of Division 18 of Title 4 of the California Code of Regulations that designates those Commission employees who are subject to section 19981, subdivision (a). This proposed action would make the following specified changes:

- Adopt Section 12591 which will designate those Commission employees, in addition to Commission members and the Commission's Executive Director, who are banned from appearances or communications before the Commission as provided in subdivision (a) of section 19981.
  - a. Subsection (a) of Section 12591 designates those former employees, by classification, who are precluded from providing representation of another before the Commission, as provided in subdivision (a) of section 19981, without regard for the scope and duties of their position. These positions include:
    - All Deputy Directors
    - The Chief Counsel
    - All Staff Counsels

These former Commission employees are specifically precluded from providing representation of another, for compensation, for a period of three years following separation from employment with the Commission because they may have had access to privileged information during their employment that would not necessarily be available to the general public. That information or knowledge could give them an unfair advantage in affecting, and/or prejudice the outcome of administrative actions or proceedings involving the issuance, amendment, awarding, or revocation of a permit, license, or approval. Allowing these employees to make appearances before the Commission soon after their separation from employment may also give the appearance that they would be able to exercise undue influence on the decisions of the Commission or staff due to their previous close working relationships. Prohibiting former employees from providing representation of another for a period of three years following separation from employment with the Commission would lessen the appearance an unfair advantage or undue influence in the outcome of Commission actions or proceedings.

- b. Subsection (b) of Section 12591 designates additional employees, by classification, who are also precluded from providing representation of another before the Commission, as provided in subdivision (a) of section 19981, if their duties and responsibilities involved recommendations or decisions affecting the outcome of administrative actions or proceedings related to the issuance, conditioning or revocation of any permit, license or approval. These additional positions include:
    - Senior Management Auditor
    - Staff Management Auditor
    - Staff Services Management Auditor
    - Staff Services Manager II
    - Staff Services Manager I

- Associate Information Systems Analyst
- Associate Management Auditor
- Associate Governmental Program Analyst
- Staff Services Analyst

This regulation is necessary because these specified employees, like those specified in subsection (a), may also have had access to privileged information during their employment. That information or knowledge could also give them an unfair advantage in affecting the outcome of proceedings before the Commission. Here too, there could also be an appearance of undue influence on the decisions of the Commission or staff due to previous close working relationships. Prohibiting former employees from providing representation of another for a period of three years following separation from employment with the Commission would lessen the appearance of undue influence on the outcome of Commission actions or proceedings.

**UNDERLYING DATA:**

Technical, theoretical or empirical studies or reports relied upon: None.

**BUSINESS IMPACT:**

The proposed action will not have a significant adverse economic impact on businesses. This initial determination is based on the fact that the regulation being proposed for adoption does not affect businesses. The regulation is only applicable to individuals employed by the Commission, as specified, upon separation from that employment.

**SPECIFIC TECHNOLOGIES OR EQUIPMENT:**

The proposed regulatory action does not mandate the use of specific technologies or equipment.

**CONSIDERATION OF ALTERNATIVES:**

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

No reasonable alternative has been considered or otherwise identified and brought to the attention of the Commission.